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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,346	12/08/2003	Edward Russell Cox	P148	1778

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THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER
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MATTISON, LORI K

ART UNIT	PAPER NUMBER
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1619

MAIL DATE	DELIVERY MODE
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04/19/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,346	<b>Applicant(s)</b> COX ET AL.	
	<b>Examiner</b> LORI MATTISON	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03/01/2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-11 and 55-59 is/are pending in the application.
- 4a) Of the above claim(s) 55-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1, 2, 4-7, 9-11, and 55-59 are pending. Claims 3, 8, and 12-54 are cancelled. Claims 55-59 are withdrawn.
2. Applicant's amendment to claim 4, filed 3/01/2010 are acknowledged.  
Claims 1, 2, 4-7, and 9-11 are pending and examined on the merits.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Objections and rejections not recited in this action are withdrawn.
5. References not included with this Office action can be found in a prior action.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 2, 4-7, and 9-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,247,562 (Bernotavicz, 1981), WO 01/17366 (Young, 2001), US Publication No. 2004/0076735 (Lacombe, 2004), Dzanis as published in the *American Institute of Nutrition* in 1994, and the Merck Veterinary Manual 8th Edition.

Instant claims 1, 2, 4-7, and 9-11 remain rejected for the reasons of record in the office action mailed 12/02/2009.

Bernotavicz teaches a moist pet food (i.e. edible composition) with blood chunks (protein) and fluid gravy system. Bernotavicz teaches that the high moisture gravy is fortified with vitamins and minerals which are sufficient to provide a nutritional pet food (i.e. an effective amount of use as an oral medicament against starvation; column 4, lines 5-15; column 3, lines 50-55; instant claim 1). The fortified gravy supplies 25-100 percent of the pet's vitamin and mineral requirements as indicated by the National

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Research Council's (NRC) recommendations for dogs and cats (column 5, lines 60-end; column 6, lines 1-5; instant claims 1 and 4). Bernotavicz teaches that the minerals such as copper, zinc, phosphorous, and manganese comprise the gravy (column 5, lines 25-45; instant claims 1, 4, and 11). Bernotavicz teaches inclusion of food thickening agents such as the cross-linking agent sodium trimetaphosphate, a polyphosphate, in the gravy composition (column 4, lines 50-60; instant claims 1 and 10). The artisan of ordinary skill, at the time the invention was made, would have recognized that the sodium ion of the sodium trimetaphosphate is effective in treating electrolyte imbalances and arrhythmias. The gravy is taught to include **any** suitable ingredients which impart the desired flavor to the gravy (column 4, lines 45-55). Example IV embodies use of the palatability enhancer, tetrasodium pyrophosphate, in the yellow cream sauce gravy (column 9, lines 15-25; instant claim 9). The blood chunks are added to the gravy (i.e. the gravy "coats" the blood chunks; column 4, lines 5-15; instant claims 1 and 4).

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Bernotavicz does not teach that the minerals which fortify the gravy are soluble as set forth by instant claim 1.

Bernotavicz does not teach that the mineral component comprises the zinc, copper, and manganese salts recited by the Markush groups set forth by instant claim 6.

Bernotavicz does not teach that the amount of zinc ion is at least 0.001%, the amount of copper ion is at least 0.0005%, and the amount of manganese ion is at least 0.001% as set forth by instant claim 2.

Bernotavicz does not teach that the amount of zinc ion is from about 0.001% to 1%, the amount of copper ion is from about 0.0005% to 0.1% as set forth by instant claim 7.

Bernotavicz does not teach that the composition comprises at least 0.02% of the mineral component by weight of the composition as set forth by instant claim 5.

Young teaches a nutritional composition for pets which includes a source of zinc (page 2, lines 10-15). The zinc may be provided as zinc sulfate (page 4, lines 10-15). Young teaches that the nutritional composition is formulated as a canned pet food, or a semi-moist pet food (page 3, lines 20-30).

Lacombe teaches a kosher pet food for dogs and cats (title; page 1, paragraph 1). The pet food may be moist for canned purposes (page 2, paragraph 25). The pet food may comprise minerals such as copper sulfate and manganese sulfate (page 2, paragraph 32)

Dzanis teaches that the Association of American Feed Control Officials (AAFCO) profiles have replaced the NRC recommendations as the recognized authority in the United States (Abstract).

The Merck Veterinary Manual 8<sup>th</sup> Edition teaches that the minimum nutrient requirement for dogs for zinc, manganese, and copper is 0.012%, 0.0005%, and 0.00073% respectively by weight (page 1626). The sum of these percentages is 0.013% (page 1626). The Merck Veterinary Manual 8th Edition also teaches that AAFCO Nutrient Requirements for dogs require manganese in an amount that is 0.0005% by weight (page 1626). Merck teaches that the AAFCO guidelines for the amount of zinc present in the composition is optimizable with the amount of zinc required ranging from is 0.012% - 0.1 % by weight (page 1626). Merck also teaches that the AAFCO guidelines for the amount of copper present in the composition is optimizable with the amount of copper required ranging from 0.00073% -0.025% by weight of the composition (page 1626). Therefore the amount of the recited minerals can range from 0.01323-0.1255% (page 1626; i.e. at least about 0.02% of mineral component; instant claim 5).

With regard to instant claims 1 and 6, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have added the soluble mineral salts manganese sulfate, copper sulfate, and zinc sulfate to the gravy of Bernotavicz's pet food composition because Bernotavicz teaches inclusion of copper, manganese and zinc in the gravy composition and the combined teachings of Lacombe

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and Young teach that the water soluble copper sulfate, manganese sulfate, and zinc sulfate salts are suitable minerals for wet/moist dog foods.

With regard to instant claims 2 and 7, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have modified Bernotavicz gravy composition to comprise zinc ion, manganese ion, and copper ion in an amount of 0.012%, 0.0005%, and 0.00073%, respectively, by weight because AAFCO guidelines require nutritionally balanced dog foods to comprise a minimum of zinc ion, manganese ion, and copper ion in an amount of 0.012%, 0.0005%, and 0.00073%, respectively. The skilled artisan would have been motivated to do so because Bernotavicz expresses a desire to provide a nutritionally balanced animal food composition by teaching that minerals and vitamins should be added as suggested by guidelines of the NRC with the artisan of ordinary skill recognizing that AAFCO requirements are those recognized in the United States. The skilled artisan would have been further motivated to do so in order to provide a nutritionally balanced dog food in order to access and attract American customers who desire to feed their pet nutritionally balanced food.

With regard to instant claim 5, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have modified Bernotavicz's gravy composition to include a mineral component in an amount of 0.02% because AAFCO guidelines require nutritionally balanced dog foods to comprise copper, manganese, and zinc (i.e. mineral component) in a combined amount of 0.01323-0.1255% by weight of the composition. The skilled artisan would have been

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motivated to do so because Bernotavicz expresses a desire to provide a nutritionally balanced animal food composition by teaching that minerals and vitamins should be added as suggested by guidelines of the NRC with the artisan of ordinary skill recognizing that AAFCO requirements are those recognized in the United States. The skilled artisan would have been further motivated to do so in order to provide a nutritionally balanced dog food in order to access and attract American customers who desire to feed their pet nutritionally balanced food.

### ***Response to Arguments***

In the traverse of instant claims 1, 2, 4-7, and 9-11 under 35 U.S.C. 103(a) as being unpatentable over Bernotavicz, Young, Lacombe, Dzanis, and the Merck Veterinary Manual 8th Edition, Applicant alleges that the references fail to teach or suggest at least a portion of both the soluble mineral component and the phosphate component being coated on the surfaces of the composition such that at least part of the mineral component is dissolved in the saliva of a cat or dog during mastication (Reply, page 7, paragraph 2).

Applicant's arguments have been considered but are not persuasive.

With regard to Applicant's allegation that the cited references do not teach or suggest the structural limitation that at least a portion of the soluble mineral component is coated on the surface of the composition, Bernotavicz teaches that the minerals and tetrasodium pyrophosphate (i.e. soluble phosphate component) are added to the gravy which coats the blood chunks (column 9, lines 5-25). As discussed above, the soluble minerals such as zinc, copper, and manganese sulfates were known and taught for use



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in canned and semi-moist pet foods by Young and Lacombe (Young-page 2, lines 10-15; page 3, lines 20-30; page 4, lines 10-15; Lacombe-title; page 1, paragraph 1; page 2, paragraphs 25 and 32). Thus, it would have been *prima facie* obvious to one of ordinary skill in the art, at the time the invention was made, to have added these mineral salts taught by Young and Lacombe to Bernotavicz's moist pet food because Bernotavicz teaches addition of minerals to his gravy and sulfate salts of zinc, copper, and manganese sulfates were previously taught for use in canned (i.e. moist) pet food.

With regard to Applicant's traverse that "at least part of the mineral component is dissolved in the saliva of a dog or cat during mastication" is not taught by the prior art, it is noted that this is a recitation of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim's limitations. The combination of references teaches the structure recited by the instant claims. Specifically, Bernotavicz teaches that the minerals and tetrasodium pyrophosphate are added to the gravy which coats the blood chunks (column 9, lines 5-25). With regard to the recitation that at least part of the mineral component is dissolved in the saliva of a dog or cat during mastication, one of ordinary skill in the art would recognize that the copper, manganese, and zinc salts taught by the combined references are water- soluble and that saliva is an aqueous media. Thus, the dissolution of these salts in saliva would naturally flow from scientific principles and the intended use of feeding the gravy with blood chunks to an animal.

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### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORI MATTISON whose telephone number is (571)270-5866. The examiner can normally be reached on 8am-6pm (Monday-Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler can be reached on (571)272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LORI MATTISON/  
Examiner, Art Unit 1619

/Ashwin Mehta/  
Primary Examiner, Technology Center 1600